Supreme Court of the United States.

No. 503.—October Term, 1903.

WILLIAM H. POPE, Plaintiff in Error,
vs.
JOHN M. C. WILLIAMS and JOHN W. HARPER, Officers of Registration, constituting the Board of Registry for Election District No. 7, of Montgomery County Maryland.

Petition for Rehearing.

To the Honorable the Justices of the Supreme Court of the United States:

William H. Pope, plaintiff in error, respectfully asks a rehearing of this cause, upon the following grounds:

I.

The court, in the opinion by it delivered, (*a*) *has omitted to state and consider material facts bearing upon the Federal question presented by the record;* (*b*) *has misconceived the claim of Federal right made by the plaintiff in error; and* (*c*) *has decided the case upon a mistaken hypothesis.*

(*a.*) The following material facts are not referred to in the statement of facts preceding nor in the body of the opinion, viz: At the time of the removal of plaintiff in error into Maryland he was an adult male citizen of the

United States, and the Constitution of Maryland then and thereafter conferred the right to be registered as a lawful voter upon adult male citizens of the United States after a residence of one year in the State.

(b.) The Federal right asserted by the plaintiff in error was not that the right to vote in Maryland was "a privilege springing from citizenship of the United States." On the contrary, he conceded that such privilege was derived under the Constitution of Maryland. The claim made was that plaintiff in error had been deprived of the right to register and thereafter to vote—just as he might have been deprived of a State office or other political or property right—by the giving effect to the Maryland statute of March 29, 1902. This court was asked to review the judgment below because in the State court plaintiff in error had drawn in question the validity of the State statute on the ground that it was repugnant to the Constitution of the United States, and the decision was in favor of its validity. (Rev. Stat. sec. 709.) The Federal question presented by the record is, Did the Maryland act of March 29, 1902, abridge a right, privilege or immunity of the plaintiff in error *as a citizen of the United States*, (viz., his State citizenship,) contrary to the implied and express prohibitions of the Fourteenth Amendment?

(c.) The discussion, in the opinion, of the rights of plaintiff in error is based upon the facts detailed by the court in its precedent statement of facts. The court says (italicizing mine):

> The objections of a Federal nature, which are made by the plaintiff in error to the validity of the statute, are set out in his petition, *and are also contained in the above statement of facts*, and are substantially reproduced in his assignment of errors.

Yet, as already stated, facts very materially bearing upon the rights of plaintiff in error are not mentioned in that statement. So, also, the court assumes that no other ground of complaint against the statute was available to plaintiff in error than that which might result solely "by reason of his removal into Maryland with an intent to become a citizen of that State." There is not contained in the opinion any allusion nor is any weight given to

the fact that immediately upon the removal of plaintiff in error into Maryland, *having then formed the intention to make that State his permanent home*, he became, *by virtue of the Constitution of the United States*, a citizen of Maryland. It is respectfully submitted that the question which is considered and passed upon in the opinion is whether the plaintiff in error—treating him as not shown by the record to have acquired the Federal privilege of State citizenship immediately upon his removal into Maryland—can be heard, merely because of his having come into Maryland "with an intent to become a citizen of that State," to question "whether the conditions prescribed by the State (in the statute in question) were reasonable or unreasonable."

II.

In reliance upon the rulings of this court in *Southern Pacific Co.* v. *Denton*, (146 U. S. 207, and cases cited,) upholding the right of a foreign corporation to assail the constitutionality of provisions in a State law when repugnant to the Constitution of the United States, even though such law had been passed before the coming of the corporation into the State, and because it was not seriously questioned by the defendants in error that plaintiff in error could make a like objection if in fact a Federal right was abridged by the statute in question, plaintiff in error did not discuss in his brief or orally argue the question whether he was estopped, because of the passage of the statute in question before his removal into Maryland, from claiming that the statute violated the Federal Constitution. If the court intends, by the statements made in the opening paragraph of the opinion, to be understood as overruling the cases above referred to, and as having decided that plaintiff in error is estopped from questioning the constitutionality of the statute, *although it abridges his Federal right of State citizenship*, then, in the interests of justice, plaintiff in error should be afforded an opportunity to demonstrate that no element of estoppel is present in this case, particularly in view of the charac-

ter of the constitutional privilege in question, (to permit the exaction of *a surrender or waiver of which would not be in consonance with sound public policy,*) and also in view of the provisions of the second section of the fourth article of the Constitution of the United States and the decisions of this court thereon, and the terms of the Fourteenth Amendment and the decisions in respect thereto.

III.

In his brief and on the oral argument plaintiff in error did not discuss the scope and meaning of the Fourteenth Amendment as respects the extent of the power of the States to attach conditions to the acquisition of the privilege of suffrage, by classification or otherwise. This was occasioned by reliance upon the decision in *Boyd* v. *Thayer*, (143 U. S. 135,) holding that the deprivation of a State office through an erroneous denial of citizenship could be relieved against; the declaration in the *Slaughter House Cases*, (16 Wall. 80,) that on the acquisition of the Federal right of State citizenship, a citizen of the United States acquired "the same rights as other citizens of the State;" and the approval in *Blake* v. *McClung*, (172 U. S. 249,) of the statement in *Corfield* v. *Coryell*, (4 Wash. C. C. 380,) that, by virtue of the second section of the fourth article of the Constitution of the United States, a citizen of one State on removing into another State possessed the Federal privilege to acquire "the elective franchise as regulated and established by the laws or Constitution of the State," evidently having reference to provisions which operated upon the citizens of the State, generally. In view of the sweeping declarations made by the court, in its opinion, to the evident purport that a State possesses an arbitrary power, so far as the Constitution of the United States is concerned, as to the conditions which it may impose upon the acquisition of the right of suffrage by citizens of the United States removing into a State, plain-

tiff in error asks to be heard upon the proposition which he contends for, that the Fourteenth Amendment prohibits the attaching of conditions to the acquisition of the voting or any other State political privilege which are repugnant to the Constitution of the United States, and upon the further proposition that the Fifteenth Amendment does not conflict with such construction.

The undersigned, as a member of the bar of this honorable court, humbly conceives that it is proper that the writ of error herein should be reheard by this court, and he therefore respectfully certifies accordingly.

Dated Washington, D. C., April 8, 1904.

WILLIAM H. POPE,
Plaintiff in Error, pro se.